IN THE HIGH COURT OF BOMBAY AT GOA.

SECOND APPEAL NO. 43 OF 2001.

1. Dr. Irvino Sertorio D'Cruz
   Barros, major of age,
   Medical Practitioner.
2. Nazareno Barros, major of
   age, landlord,
   both represented by Attorney
   Smt. Zena Circumcicao N. Correia
   e Barros, r/o H. No. 120,
   Naikawado, Velim, Salcete, Goa. ... Appellants.

Versus

Sonu Shanu Gaonkar,
Agriculturist, r/o Sabem,
Quepem, Goa. ... Respondent.

Mr. Sudin Usgaonkar, Advocate for the Appellants.

Mr. S.D. Lotlikar, Senior Advocate with Ms. R. Thakur,
Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 27th February 2002.

ORAL JUDGMENT.

This Second Appeal has been filed at the instance of the original plaintiffs, who were unsuccessful in two Courts below in obtaining the relief of permanent injunction to restrain the defendant, his family members, relatives, agents and servants from doing any construction or from carrying on with the work of any construction in the suit property or from interfering with the suit property in any manner whatsoever and also for mandatory injunction directing the defendant to remove the plinth constructed in the suit property and restore the ground underneath to its original position.

2. The plaintiffs/appellants herein have filed Regular Civil Suit No. 46 of 1990, which came to be dismissed by the learned Civil Judge, Junior Division, Quepem, by Judgment and Decree dated 31st August 1990. The learned trial Court had framed the following issues:-

1. Whether the plaintiff proves that the property Ollo Soroddo bearing Land Registration No. 5065 bears Matriz No. 63 and 67 with the boundaries mentioned in para 1 of the plaint?

2. Whether the plaintiff proves that the land under survey no. 93/5 of Morpirla Village is the part of the said property bearing Land Registration No. 5065?

3. Whether the plaintiff proves that the property 'Golicho Sordo' sold to the defendant by Deed of Sale dated 22.9.1980 is exclusively the land under survey no. 9/1?

4. Whether the plaintiff proves that the structure raised by the defendant in survey no 93/5 (originally forming part of survey no. 93/3 lies in the suit property?

5. Whether the defendant proves that the land under survey no. 93/5 (originally forming part of survey no. 93/3 of Morpirla Village is the part and parcel of the property 'Golicho Sorodo' or 'Gallicho Sarodo' and 'Galli Tembo' purchased by him vide Deed of Sale dated 22.9.80?

6. Whether the defendant proves that the suit is bad in law and not maintainable and that the plaintiff has no locus standi to file the suit?

and additional issue as under:-

Whether the defendant proves that the suit is barred by law of limitation?

In respect of issues 1, 5 and 6 the learned trial Court

had recorded a finding in the affirmative. In respect of issues 2, 3 and 4 the learned trial Court had recorded a finding in the negative. In respect of the additional issue, whether the defendant proves that the suit is barred by law of limitation, the learned trial Court recorded a finding in the affirmative. The learned trial Court had come to the conclusion that the plaintiffs' property bearing Land Registration No. 5065 and Matriz Nos. 63 and 67 did not include survey holding No. 93/5 of Morpirla Village. The learned trial Court came to the conclusion that the land under survey No. 93/5 was part and parcel of the property purchased by the defendant by Sale Deed dated 22nd September 1980. The learned trial court, therefore, dismissed the suit of the plaintiffs.

3. The plaintiffs being aggrieved by the dismissal of their suit filed Regular Civil Appeal No. 61 of 1998. The said Civil Appeal also came to be dismissed by the learned Additional District Judge, Margao, by Judgment and Decree dated 15th March 2001. Hence the present Second Appeal.

4. With the assistance of Mr. Usgaonkar, learned counsel appearing for the appellants and Mr. Lotlikar, learned senior advocate for the respondent, I have perused the Judgments of the two Courts below. The

learned appellate Court has re-appreciated the evidence and has come to the conclusion in paragraph 7 of its Judgment that as per the Sale Deed dated 22nd September 1980, Exhibit D.W.1/A, the plaintiff and the wife of plaintiff no. 1 through P.W.1 have sold to the defendant the property known as 'paddy field Gallicho Sorodo', which lies between a water drain and the property 'Ollo Sorodo' bearing Land Registration No. 5064 and Matriz Nos. 69, 70 and 71 and survey nos. 9/1 and 93/3. The said land survey No. 93/3 was re-surveyed under No. 93/5. In the appeal it was contended by the plaintiffs/appellants that there was a mistake in the Sale Deed and land at survey No. 93/3, Matriz No. 70 was wrongly included in the Sale Deed. The learned appellate Court has rightly observed that there was no averment in the plaint that there was a mistake in including the land at Matriz No. 70, survey No. 93/3 nor was any prayer made in the suit for cancellation or rectification of the mistake. The learned appellate Court, therefore, rightly endorsed the finding of the trial Court that unless the Sale Deed dated 22nd September 1980, Exhibit D.W.1/A was rectified, the Sale Deed would remain valid and would have to be accepted. Thus, the defendant had a valid title to land at Matriz No. 70, survey No. 93/3 by virtue of the Sale Deed dated 22nd September 1980. In paragraph 8 of the Judgment of the learned appellate

Court, the learned appellate Court has compared the boundaries and has come to the conclusion that the plaintiffs have not succeeded in identifying survey No. 93/5 as part of the property 'Ollo Sorodo'. The learned appellate Court after referring to the evidence of the witnesses in paragraph 11 has recorded a finding that the evidence of the plaintiffs in respect of possession of survey No. 93/5 was not convincing whereas the evidence of the defendant, which was supported by the Sale Deed dated 22nd September 1980 was convincing. The appellate Court has made a reference to the House Tax Receipts at Exhibit D.W.1/E coupled with the evidence of the defendant's witnesses, who have corroborated the defendant's possession. The appellate Court, therefore, accordingly dismissed the appeal.

5. It is urged before me that the appellate Court was in error in observing that the subsequent suit filed by the plaintiffs for correction of the Sale Deed was not reflected in the plaint of the present suit. According to the learned counsel for the appellants, the suit challenging the entry in the Sale Deed in respect of the suit land was filed nearly 6 years after the present suit. Be that as it may, nothing turns on the observations of the appellate Court as the fact remains that when the present suit was filed there was no challenge for declaring that the land at Matriz No. 70,

survey No. 93/5 had been wrongly included in the Sale Deed. It was also urged before me that survey No. 93/5 stands in the name of the appellants and the presumption under Section 105 had not been rebutted by the defendant. It is needless to mention that the survey entries do not confer title and the defendant had been successful in rebutting the presumption by the production of Sale Deed, which is a document of title. The substantial questions of law which are urged in the appeal relate to the fact that there was no proper identification of the property that was sold to the defendant. I am afraid that the substantial questions of law urged in the present appeal turn on the appreciation of evidence and the two Courts below have appreciated the evidence and have recorded their findings and I see no perversity in the reasonings of the two Courts below to upset their findings in Second Appeal.

6. Thus, there is no merit in the Second Appeal and the same is dismissed with no order as to costs.

(P.V. HARDAS)
JUDGE.

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